IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1382 OF 2004

Waghwadi Grampanchayat,
Waghwadi. ... Appellant

V/s

Ganga Ganu Wagh & ors. ... Respondents

Mr. A.A. Kumbhkoni i/by T.D. Deshmukh for the appellant.

Mr. Pratap Patil for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 26TH JULY, 2005

P.C.:

1. Heard learned counsel for both parties.

2. Admit.

3. The following substantial question of law is involved in this second appeal is, whether in view of the observations made by the lower appellate Court on page No.20 of the compilation, the judgments, decrees and orders passed by both the Courts below are sustainable in law ?

4. The learned advocate appearing on behalf of the respondents waives notice. By consent of parties, appeal taken up for final disposal in view of the short question involved in the appeal.

5. The plaintiff is in actual physical possession of the suit property and the defendant Gram Panchayat has served a notice of eviction on the plaintiff, resulting into filing of the present injunction simplicitor suit by the plaintiff. Both the Courts below have granted permanent injunction in favour of the plaintiff. Hence the defendant being aggrieved by the said judgments, decrees and orders, has preferred the present second appeal.

6. The observation on page 20 of the compilation reads thus:

> "The appellant village panchayat may institute a suit for declaration and possession and can acquire the relief by leading satisfactory evidence, but till then the respondents are entitled to protect their lawful possession over the suit property."

In view of these observations of the appellate Court, the unqualified and permanent decrees of injunction passed by the Courts below are not sustainable and, therefore, require modification and hence are modified as per the following order:-

O R D E R

(I) The second appeal is allowed partly and the judgments, decrees and orders passed by the Civil Judge, Jr.Divn., Islampur, dated 10.1.1996 in R.C.S. No. 436 of 1986, as confirmed by the Addl. District Judge, Islampur by its judgment, decree and order dated 11.8.2004 passed in R.C.A. No. 520 of 1999 (Old No. 97 of 1996) are modified to the following extent only:

(a) The defendant is hereby restrained from ousting the plaintiff from the suit property without following due process of law.

(b) The issue of title to the suit property is kept open, to be decided in appropriate proceedings.

(c) It will be open for the defendant herein either to institute a suit for declaration of title to the suit property and for a decree for actual physical possession of the suit property from plaintiff herein or to approach the Collector under Sec. 59 of the Bombay Village Panchayat Act for appropriate relief. It is clarified that the defendant herein shall not proceed against the plaintiff under Sec. 53 of the said Act until, either the suit before the Civil Court, if instituted or proceeding under Sec. 59 of the said Act before the Collector, as the case may be, is decided finally.

(d) In case, if such a suit is filed by the defendant herein, the same will be decided on its own merit without being influenced by any of the observations made either in this order or in the aforesaid two judgments, decrees and orders of the Courts below.

(II) Appeal stands disposed of accordingly with no order as to costs.

(III) Consequently, Civil Application No. 1845

of 2004 also stands disposed of with no order as to costs.

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